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FOLEY & LARDNER LLP
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OFFICE OF PETITIONS

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|----------------------------|---|----------------------------|
| In re | : | DECISION ON APPLICATION |
| Landis, et al. | : | FOR PATENT TERM ADJUSTMENT |
| Application No. 09/911,367 | : | AND NOTICE OF INTENT |
| Filed: July 23, 2001 | : | TO ISSUE |
| Patent No. 7,071,357 | : | CERTIFICATE OF CORRECTION |
| Issued: July 4, 2006 | : | |

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 35 U.S.C. 154(b)(3)(B)(ii)", filed September 1, 2006. Patentees request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from eight hundred four (804) days to one thousand forty-one (1041) days.

The application for patent term adjustment is **GRANTED**.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one thousand forty-one (1041) days**.

On February 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred eleven (211) days. On February 23, 2004, Applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred seventy-two (372) days.

¹ Applicant filed the application for patent term adjustment prior to payment of the issue fee.

The petition was granted in part in a decision mailed on March 17, 2006. The patent issued with a patent term adjustment of eight hundred four (804) days.

Patentees timely filed the instant request for reconsideration on September 1, 2006.

Patentees point out that he was improperly assessed applicant delay of one hundred twenty (120) days for filing the application for patent term adjustment on February 23, 2004. In addition, Patentees argue that they were improperly assessed applicant delay of one hundred twenty (120) days for responding to a "Notice Under 37 CFR 1.251 - Patent", after the mailing of the Notice of Allowance. Lastly, Patentees point out that the Office was improperly assessed seven hundred four (704) days of delay in issuing the patent. According to Patentees, only seven hundred one (701) days should have been assessed.

With respect to the one hundred twenty (120) days of applicant delay assessed for filing the application for patent term adjustment, pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, zero (0) days should have been assessed for this filing.

In addition, applicants were assessed delay of one hundred twenty (120) days for the submission of a "REPLY TO NOTICE UNDER 37 CFR 1.251 TO RECONSTRUCT FILE" on September 26, 2005. A Reply to Notice under 37 CFR 1.251 is not identified as one of the papers the filing of which the Director has specifically deemed not to be a failure to engage in reasonable efforts under 37 C.F.R. §1.704(c)(10).² Nevertheless, under the circumstances of this case, it is concluded that the filing of applicants' "REPLY TO NOTICE UNDER 37 CFR 1.251 TO RECONSTRUCT FILE" is not a failure to engage under 37 C.F.R. §1.704(c)(10). Accordingly, the assessment of one hundred twenty (120) days of applicant delay with respect to this filing is not warranted.

Lastly, a review of the file confirms that the PTO was improperly assessed delay of seven hundred four (704) days for issuing the patent. Applicants paid the issue fee on April 2, 2004, not March 30, 2004 as indicated in PAIR. Accordingly, seven hundred

² See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. 111 (June 26, 2001).

one (701) days should have been assessed, not seven hundred four (704).

In view thereof, the correct determination of patent term adjustment is one thousand forty-one (1041) days.

The application file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment **one thousand forty-one (1041) days**.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,071,357 B2

DATED : July 4, 2006

INVENTOR(S) : Landis, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (804) days

Delete the phrase “by 804 days” and insert – by 1041 days—